



**U.S. Department of Justice**

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September 11, 2023

**BY ECF**

The Honorable Madeline Cox Arleo  
United States District Judge  
Martin Luther King Jr. Building & U.S. Courthouse  
50 Walnut Street  
Newark, NJ 07102

Re: *Duronio v. Parker*, No. 23-1446 (MCA)(ESK)

Dear Judge Arleo:

I am the Assistant United States Attorney assigned to the above case, an action brought by *pro se* plaintiff Roger Duronio. I respectfully write to provide an update on service of process and representation of the defendants in this matter.

In the complaint, Duronio appears to assert *Bivens* claims against Treasurer of the United States Marilyn Malerba, U.S. Attorney Philip Sellinger, and two USAO employees, Kelly Parker and Robin Brown (collectively, the “*Bivens* Defendants”).<sup>1</sup> See ECF No. 1 (Complaint) at 23. Pursuant to Fed. R. Civ. P. 4(i)(3), a plaintiff seeking to sue a federal official in his or her individual capacity must (1) serve the United States in accordance with Rule 4(i)(1) (by, in addition to other requirements, serving a copy of the summons and complaint on the relevant U.S. Attorney’s Office in person or by registered/certified mail); and (2) serve the individual officials in accordance with Rule 4(e), (f), or (g). The Federal Rules also provide that “[a]ny person who is at least 18 years old and not a party may serve a summons and complaint.” Fed. R. Civ. P. 4(c)(2).

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<sup>1</sup> The complaint also lists Attorney General Merrick Garland and President Biden as defendants in the caption, but it does not appear to contain any allegations against them. Accordingly, to the extent Duronio seeks to sue the President and the Attorney General, the Government construes the complaint as raising only official capacity claims against them.

Pursuant to Rule 12(a)(3), the federal official has 60 days to respond to the complaint “within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.” Fed. R. Civ. P. 12(a)(3).

On or about May 5, 2023, the U.S. Attorney’s Office received a copy of the summons and complaint, which it appears that Duronio personally sent by certified mail. On or about August 15, 2023, the U.S. Attorney’s Office the U.S. Attorney’s Office received three copies of the summons and complaint, directed to Ms. Parker, Ms. Brown, and U.S. Attorney, also apparently sent by Duronio personally via certified mail.<sup>2</sup> These efforts did not qualify as proper service on the individual defendants under Rule 4(i)(3). Accordingly, the *Bivens* defendants’ time to respond to the complaint has not yet started to run.

Since learning of this suit, the *Bivens* Defendants have sought representation from the Department of Justice, which has authorized this Office to represent them. Each *Bivens* Defendant has now authorized me to accept service on their behalf.

Accordingly, to facilitate the progress of this action, the *Bivens* Defendants respectfully ask the Court to direct Duronio to complete service on them by mailing a copy of the summonses and complaint to my attention at the United States Attorney’s Office in Newark, which will complete service in accordance with Fed. R. Civ. P. 4(e)(2)(C) and 4(i)(3). Pursuant to Rule 12(a)(3), the *Bivens* Defendants will then have sixty days after service is complete to respond to the complaint.

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<sup>2</sup> The “Proof of Service” Duronio has filed on the docket (ECF No. 4), consists solely of USPS tracking print outs and does not provide the actual addresses (other than the city and state) or state which documents Duronio sent to those addresses. Nonetheless, the Newark receipts appear to generally confirm the dates of receipt noted above.

Thank you very much for considering this matter.

Respectfully submitted,

PHILIP R. SELLINGER  
United States Attorney

By: /s/ Kristin L. Vassallo  
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cc: **BY FIRST-CLASS MAIL**

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